IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

WP(C).No. 30753 of 2006(J)

PETITIONER:

M.I.BABY,
SUB INSPECTOR OF POLICE,
DISTRICT CRIME RECORDS BUREAU, MALAPPURAM.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO

RESPONDENTS:

---

1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, HOME DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. INSPECTOR GENERAL OF POLICE,
SOUTH ZONE, THIRUVANANTHAPURAM.

3. DEPUTY INSPECTOR GENERAL OF POLICE,
ERNAKULAM RANGE, ERNAKULAM.

BY GOVT. PLEADER SHRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K. DENESAN, J.

= = = = = = = = = = = = = = = = =
W.P.(C) No. 30753 OF 2006 J
= = = = = = = = = = = = = = = = =

Dated this the 27th November, 2006

J U D G M E N T

The petitioner is a Sub Inspector of Police in the General Executive Wing of the Police Department. While working as Sub Inspector in the Kochi City Police Control Room, he was served with Ext. P1 memo of charges with the statement of allegations stating that he gave incorrect information about the receipt of orders which directed him to remit Rs.2190.40 in the treasury and thereby misled the higher authorities. The disciplinary authority ordered non-oral enquiry into the charges and appointed an enquiry officer to look into the materials and drew up the enquiry report. On the basis of the enquiry report holding that the petitioner was guilty of the charges, the 3rd respondent passed Ext. P2 order imposing on the petitioner the penalty of withholding one increment without cumulative effect. The statutory appeal filed by the petitioner before the 2nd respondent was dismissed as per Ext. P4 order. The petitioner preferred a review petition before the Government. As per Ext. P6 the review

petition was rejected. Thereafter, the petitioner filed a mercy petition but that also was rejected vide Ext. P7 passed on 11-7-2006. Feeling aggrieved, this writ petition has been filed challenging Exts. P2, P4, P6 and P7.

2. It is contended that the impugned orders are unsustainable mainly on the ground that the petitioner was not afforded reasonable opportunity to defend the charges. According to him, he had submitted an application for permission to take extracts from the relevant records; but before allowing that request Ext. P2 order was passed finding him guilty of the charges.

3. On going through the impugned orders it is seen that the above contention of the petitioner is devoid of merit. The petitioner was specifically informed as per Ext. P1 that he should submit his written statement of defence within 15 days from the date of receipt of the charge memo. But the petitioner did not file his written statement of defence. He did not make any request for extension of the time granted for filing the written statement of defence. Therefore, after the

expiry of the period stipulated in the charge memo for receipt of the written statement of defence, the enquiring authority, after going through the materials on record, filed his report. The disciplinary authority considered the report and passed Ext. P2 order finding the petitioner guilty of the charges.

4. The fact that the petitioner failed to submit his written statement of defence in reply to the memo of charge is not in dispute. The excuse put forward by him that he was waiting for a reply from the disciplinary authority in response to his request for perusal of records is not convincing. No material has been placed by the petitioner to show that he made any such request before the disciplinary authority. Even assuming that he had made any such request, he was expected to apply for extension of time to file his written statement of defence pending consideration of his request. In the above circumstances, neither the enquiring authority nor the disciplinary authority can be found fault with for passing an order in the nature of Ext. P2 based on the materials available on record.

5. The allegations made against the petitioner are

such that the truth or correctness of the same can be ascertained by proper examination of the records. The explanation submitted by the petitioner in the form of an appeal memorandum before the 2nd respondent was found not satisfactory. The 1st respondent-Government has considered in detail the contentions of the petitioner and has passed a speaking order. The minor penalty of withholding one increment is neither excessive nor disproportionate to the charges proved against the petitioner.

6. I find no grounds to interfere with the impugned orders. The writ petition is, therefore, dismissed.

K.K. DENESAN
JUDGE

jan/